

**REMARKS OF MATTHEW BERRY,  
CHIEF OF STAFF TO FCC COMMISSIONER AJIT PAI,  
AT THE FLORIDA ASSOCIATION OF BROADCASTERS  
2015 ANNUAL CONVENTION**

**MIAMI, FL**

**JUNE 24, 2015**

It's great to be here in Miami. I've never been to the Magic City before but I've always wanted to come. After all, many people have told me through the years that my sense of style and outlook on life remind them of the characters from a famous television show set in this city—one of the iconic programs of the 1980s. Unfortunately, I'm not referring to *Miami Vice*, but rather *The Golden Girls*.

It's also a privilege to speak here at your annual convention. As Florida broadcasters, you cover the news that matters to the residents of the Sunshine State, whether it involves hurricanes (either weather events or the University of Miami football team), U.S. relations with Cuba, immigration policy, or state government.

But you serve another important role as well. You bring to the nation's attention some of the strangest stories found anywhere in our country. On WTVJ's (NBC Miami) "Weird News" website, for example, I learned that a man brought a live shark to a sidewalk outside of a Fort Lauderdale supermarket and tried to sell it to shoppers who passed by. On WFOX-TV's (Fox Jacksonville) "Weird Florida" page, I learned about a Cape Coral man who danced on the roof of a police car to "Rich Girl" by Hall & Oates and "Goodbye Stranger" by Supertramp in order to protect children from vampires. On "WTSP Weird," (CBS Sarasota), I learned that an 82-year-old Lake Wales man slashed the tires of an 88-year old woman's van with an ice pick because she sat in his favorite seat at a bingo game. And all of this news broke in just the past month!

But given my job, one recent story that was widely covered by Florida broadcasters merits special attention. Two weeks ago, a Fort Lauderdale woman called 911 to ask for assistance after she gave a man five dollars in exchange for marijuana but received nothing in return. She said: "He got my money, and I want my drugs." When police arrived, she was arrested for, among other things, possessing a small bag of the drug "flakka." Now, I have no idea what "flakka" is, but as an FCC official, I will go out on a limb to say: This was not an appropriate use of the 911 system.

Switching to more serious matters, I know that the relationship between the FCC and broadcasters hasn't been great lately. Indeed, I was thinking of wearing a button today that read: "Don't blame me; I work in the minority." But let me assure you: Those of us who serve in Commissioner Pai's office have a profound respect and appreciation for the critical role that broadcasting plays in our nation's communications landscape.

In my travels with Commissioner Pai, I have visited broadcasters from Pittsburgh to San Diego, Buffalo to College Station, and Los Angeles to Washington, DC. I've even been to an AM radio station in Toronto. And while there are certainly differences among stations, I've also found there's a common denominator: a passionate commitment to service. From giving people the information they need to stay safe during a weather emergency to raising money for the local food bank or helping to find a missing child, you play a vital role in your local communities. Indeed, you are connected to your communities in a way that few others are. People turn to you when tragedy strikes. They turn to you to celebrate a local sports team's championship. And for many, a favorite television or radio personality is like an old friend to whom they can turn for comfort when life gets tough.

In our nation's capital, where I work, the phrase "public interest" is thrown around a lot. Indeed, there is a cottage industry of lawyers and lobbyists who pursue a narrow and extreme ideological agenda

under the guise of promoting the “public interest.” But to broadcasters, serving the public interest isn’t empty rhetoric or a self-aggrandizing political slogan. It is what you do each and every day, in ways large and small, to make your communities better places to live.

That, among other reasons, is why the FCC shouldn’t be your enemy. Our mission shouldn’t be to saddle you with onerous and outdated regulatory burdens. Our goal shouldn’t be to interfere with new business arrangements that allow you to compete in an increasingly crowded media marketplace. And our role shouldn’t be to lecture you on how you should change your business model.

Rather, our objective should be to create a regulatory environment that allows the broadcasting industry to thrive and enables you to do what you do best. That means we should modernize our rules to update or eliminate regulations that no longer make sense. It means that we should promote regulatory parity between broadcasting and other industries. And it means that issues of concern to broadcasters, like pirate radio, shouldn’t be ignored.

That, of course, doesn’t mean that the FCC and broadcasters always will be or should be in harmony. During his tenure at the FCC, for example, Commissioner Pai has cast some votes with which broadcasters have disagreed. Our office tries to maintain a consistent regulatory philosophy, one recognizing that the invisible hand of the free market is generally a better guarantor of consumer welfare than the clumsy fist of government. On the whole, our preference is for less regulation. That means we will agree with you on a lot of issues and disagree with you on some others. And where we agree, Commissioner Pai has demonstrated that he is willing to take a leadership role, pushing for action on matters that you care about.

But these days, the Commission as a whole seems to have taken a different approach to broadcasting that some find rather curious. On issues where broadcasters oppose regulation, the Commission seems to support it. On those where broadcasters support regulation, the Commission seems to oppose it. And on uncontroversial issues where broadcasters ask for action, the Commission often seems to do nothing. The end result has left many wondering what exactly is motivating the Commission’s decision-making.

I will leave it to others to answer that question. Rather, I would like to spend the rest of my remarks this afternoon discussing a few issues that are on the FCC’s agenda. Let’s start with a topic of great importance to television broadcasters: the incentive auction.

Throughout the incentive auction proceeding, Commissioner Pai has fought for the FCC to treat broadcasters fairly. What does that mean? To begin with, the Commission should do everything that it can to hold harmless those broadcasters who either do not participate in the reverse auction or whose bids in the reverse auction are not accepted. Congress created a fund of \$1.75 billion to reimburse broadcasters for their relocation expenses following the incentive auction. The Commission’s goal therefore should be to implement a repacking plan that will cost no more than \$1.75 billion. It would be unfair for the Commission to require television stations receiving no benefit from the auction to pay for relocation expenses out of their own pockets. That is not what Congress intended.

Additionally, the Commission should ensure that following the incentive auction television broadcasters receive top priority in the portion of the UHF band primarily allocated for broadcast television. Or to put it another way, in a downsized UHF broadcast television band, the primary users of the band (full-power television stations) should be prioritized over secondary users of the band (unlicensed white space devices). But unfortunately, the Commission’s majority recently suggested that restrictions might be placed on full-power television stations after the incentive auction in order to protect a vacant channel for unlicensed white space devices. Full-power television stations might be precluded from modifying their facilities in order to better serve their viewers if doing so would eliminate the last vacant channel in the band. And full-power television stations might have to defer to unlicensed white-space devices if a television allotment proceeding would fill the last vacant channel in a market. The

FCC should not pursue these ideas. The needs of secondary users of spectrum should not take precedence over a band's primary users.

Furthermore, those broadcasters interested in participating in the reverse auction should be offered market prices for their spectrum. The incentive auction, after all, was designed to be a voluntary, market-based mechanism for reallocating spectrum from broadcast television to mobile broadband. But too often throughout this proceeding, the Commission has tried to rig that market to benefit favored companies and industries and penalize those in disfavor.

One example is something called dynamic reserve pricing, which I will call DRP for short. DRP is a complicated concept, and if anyone wants to ask during the question-and-answer session, I will do my best to explain the details. But for present purposes, here is what you need to know. DRP was a scheme concocted by the Commission to pay broadcasters below-market prices for their spectrum. In certain situations, the price set by the market during the auction would be deemed too high, and the FCC would arbitrarily reduce the amount offered to broadcasters for their spectrum.

Last May, when this idea surfaced, Commissioners Pai and O'Rielly asked the Commission not to pursue it, but our offices lost on yet another party-line vote. And last December, when the Commission actually proposed implementing DRP, our effort to defeat it failed by a single vote once again. But since that vote, a wave of opposition to DRP has formed from broadcasters and wireless carriers alike. And so, the third time might be the charm.

According to a recent story in *Multichannel News*, the Chairman's Office has decided to abandon DRP. And if that report is accurate, we will finally have the votes to kill it once and for all when the Commission considers the Incentive Auction Procedures item next month. This would be a major victory not only for broadcasters seeking a fair price for their spectrum, but anyone who wants the incentive auction to succeed.

Turning to another issue, if broadcasters want top dollar for their spectrum, it is important that wireless carriers bring as much money as possible to the auction. But unfortunately, the Commission has adopted policies to restrict certain carriers' participation in the auction. By setting aside certain spectrum for some carriers but not for others, the Commission is poised to reduce competition and depress prices in the forward auction, which means less money for broadcasters participating in the reverse auction. Just look at what happened in a Canadian spectrum auction earlier this year. Those spectrum blocks where the government restricted who could bid sold for about 11 cents per MHz POP, while the spectrum blocks where everyone could bid sold for around three dollars per MHz POP.

But those carriers who will benefit from the Commission's spectrum set-aside aren't satisfied and have launched a major lobbying effort to convince the FCC to reserve even more spectrum for them and to allow them to buy reserved spectrum at even lower prices. I must admit that aspects of their campaign are quite amusing. It isn't every day that companies with market caps over \$30 billion attempt to foment a populist uprising so they can receive more corporate welfare from the federal government. But just remember this: If their effort succeeds, there will be less money to pay broadcasters in the reverse auction.

Shifting away from the incentive auction, I'd like to touch briefly on the topic of media ownership. Even though Congress requires the FCC to review our ownership regulations every four years, it has been about seven-and-a-half years since we completed our last media ownership review, and it looks like it will be at least another year before we finish the review that began in 2010. This is unacceptable. Instead of thumbing our nose at Congress, we should comply with the law. And instead of maintaining ownership regulations that reflect the media marketplace as it existed decades ago, we should modernize our rules to keep up with the times. In particular, it is long past time that we eliminate the FCC's newspaper-broadcast cross-ownership rule, which is a relic from another era. Indeed, at the rate

things are going, I'm not sure which will last longer: print newspapers or the newspaper-broadcast cross-ownership rule.

Speaking of media ownership, the FCC took action last year to prohibit joint sales agreements (JSAs) among television stations in all but the largest markets. Under current law, most joint sales agreements will have to be unwound by the end of 2016. Commissioner Pai strongly disagreed with this decision. The efficiencies created by JSAs have enabled many television stations to survive, particularly in smaller markets, and have promoted the Commission's interest in localism.

Consider one example right here in Florida. In 2008, two stations in Gainesville entered into a JSA, WNBW and WGFL. Before that JSA, neither station was producing or airing any local news. But the JSA allowed WGFL to invest in local newsgathering, including the production of five hours of local news programming a week that aired on WNBW. As the parties to the JSA told the Commission in 2012, the JSA "allowed for the launch of entirely new local news programming on both stations where it would not otherwise have been financially viable."

Unfortunately, the Commission ignored this evidence and similar evidence from all around the country in its decision last year. But thankfully, there is some good news to report. While the FCC struck against JSAs in a partisan manner, the backlash in Congress has been bipartisan. In the Senate, Democratic Senators Barbara Mikulski and Charles Schumer and Republican Senators Roy Blunt and Tim Scott, have introduced legislation to safeguard current JSAs. The Senate Commerce Committee is even scheduled to consider it tomorrow. As Senator Mikulski put it: "This is about protecting our constituents' access to local news, politics, sports, cultural events, and emergency notifications from their own states. Local broadcasters who play by the rules should be able to trust that Washington won't make rule changes apply retroactively in ways that harm their ability to serve their communities."

And in the House of Representatives, just last week the Appropriations Committee passed a rider to stop the Commission's assault on JSAs. The 38-11 vote was overwhelming and bipartisan. So the JSA fight is far from over, the momentum is on our side, and when all is said and done, I am optimistic that we will prevail.

Turning away from television, the most pressing matter on the FCC's agenda when it comes to radio should be AM radio revitalization. Every day, it seems harder to get a good AM signal, and we see the impact in the marketplace. AM listenership is down, and advertising revenue along with it. Today, the AM band accounts for less than twenty percent of terrestrial radio listening in the United States.

But AM radio is worth saving. AM broadcasters provide critical news and information to their listeners. They promote localism. If you want to listen to the local high-school football game or church service, the place to turn is generally the AM dial. And it promotes diversity in ways that other forms of broadcast media do not. The majority of the nation's minority-owned radio stations are on the AM band.

A wide variety of foreign-language programming can be found there as well. As Claudia Puig, senior vice-president and general manager of Univision Local Media in South Florida, put it: "In many Latin American countries, radio is the medium of preference, so Hispanics are accustomed to getting their news and sports commentaries via AM radio. That tradition is still, to some extent, the norm that has carried into life here in the U.S." Indeed, right here in Miami, six of the nine AM radio stations with the largest listenership last month were Spanish language stations while such stations accounted for only two of the ten highest-rated FM radio stations in the market.

For all of these reasons, the FCC launched an AM Radio Revitalization Initiative in 2013. Our strategy is twofold. First, we need to implement reforms to give short-term relief to AM broadcasters. We proposed a series of regulatory changes to help AM broadcasters address technical challenges, such as eliminating the ratchet rule, which stands in the way of AM stations improving their facilities. And we also proposed opening a window for AM broadcasters to obtain FM translators. We know from experience that FM translators can deliver immediate and tangible help to AM broadcasters. Just ask

WAXY here in Miami or WFLA in Orlando. Translators can serve as a bridge to the future as we work on long-term fixes for the AM band. But there just aren't enough of them to go around right now. So we would like to give every AM station the opportunity to apply for its own FM translator.

Second, we are exploring ideas for solving the band's long-term challenges. For example, does all-digital transmission represent the future of AM radio? NAB has been conducting all-digital AM tests, and we have been following the results closely. Should we move to synchronous AM transmission systems? Essentially, that would involve improving AM signal quality through the use of small cells. Should we end nighttime skywave protection for Class A stations to enable other stations to provide better service at night? I don't know the answers to these questions, but they are ones worth exploring.

AM revitalization is a cause with widespread support. Our 2013 Notice of Proposed Rulemaking passed with a unanimous vote. The record contains nearly unanimous support for all of our proposals from broadcasters, large and small, as well as civil rights groups who understand the importance of AM radio for minority broadcasters. The time has therefore come for the Commission to take concrete action. Time isn't on the side of the grand old band, and there is no excuse for further delay.

The time has also come for the FCC to modernize our contest rules. The FCC requires broadcasters to disclose the material terms of any contest through periodic over-the-air announcements. The regulation was adopted in 1976, four years before I won my first radio contest. By triumphing in sports trivia, I won two tickets as an eight-year old to see a college basketball game between the University of Detroit Titans and the Lafayette University Leopards. Almost thirty-five years later, I have a distinct recollection of calling into the sports-talk show and winning the contest, but no memory whatsoever of the game, although according to the Internet Detroit beat Lafayette 67-61 two days after Christmas 1980.

Given the state of technology in the 1970s, the FCC's contest rule made sense at the time. Listeners couldn't look up contest rules on the Internet (and neither could precocious eight-year old boys search for the answers to trivia questions there). But the rule should now reflect the digital world in which we live. That's why Commissioner Pai, in the summer of 2013, called on the FCC to give broadcasters the option of disclosing the material terms of contests on a publicly accessible website so long as a station broadcasts the website address each time that it mentions the contest. This would allow interested listeners to review the contest rules at their convenience and ease the burden imposed on broadcasters. The Commission last year sought comment on that proposal, and there is no opposition to it in the record. All of those providing feedback agreed that we should update the rule.

At the Commission, we face many difficult and complicated issues. The contest rule isn't one of them. The FCC should act quickly to bring this rule into the twenty-first century.

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These are just a few of the issues of concern to broadcasters that are on the FCC's plate. And as we move forward with these and other matters, please don't hesitate to contact our office and share your suggestions. We have found that there is no substitute for direct dialogue with those who are required to comply with the FCC's rules on a daily basis. Our door is always open to you.

Thank you for allowing me to speak with you this afternoon, thank you for everything that you do for the people for Florida, and to quote *The Golden Girls* theme song and thus bring this speech full circle, thank you for being a friend.